IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 957 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DUDHIBEN GHELA &2 - Applicant(s)

Versus

BABULAL RAMJI KOLI &1 - Opponent(s)

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Appearance :

MR AS PANDYAfor Petitioner No(s).: 1,2,3.

NOTICE SERVED for Respondent No(s).: 1,2.

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CORAM :HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 14/07/2005

ORAL JUDGMENT

1.By filing instant petition under Section 115 of the Code of Civil Procedure ('the Code' for short), the applicants seek to challenge the order dated 15.4.1997 recorded below application exh.51 by the learned Civil Judge (JD) at Wankaner in Regular Civil Suit No. 140 of 1996 by which the application filed by respondent No.1/original plaintiff under Order 6 Rule 18 of the Code for cancellation of the amendment made in the plaint and the injunction application, came to be allowed and thereby amendment made in the plaint as well as suit has been deleted.

2.The respondent No.1 has filed Civil Suit No. 140 of 1996 in the Court of learned Civil Judge (JD), Wankaner against respondent No.2 for declaration and injunction on the ground that the land bearing Survey No. 173 admeasuring 3 acres – 20 gunthas was sold by respondent No.1 to respondent No.2 vide registration No. 1587 dated 31.12.1994. According to the applicants infact, the said land was of the ownership of the father of present applicants and respondent No.2 died on 16.12.1983 and the land in question was mutated in the name of present applicants and respondent No.2 vide entry No. 656 dated 8.7.1991. Till date the land in question is of the ownership of the present applicants and respondent No.2. It is the further case of the applicants that the land in question is of new tenure and therefore without prior permission of the Government, it cannot be sold. The present applicants gave three separate applications vide exhs. 24, 26 and 28 under Order 1 Rule 10 of the Code praying therein to implead them as a party in the Suit as they are necessary and proper parties. According to them, respondent no.1 has deliberately not joined them as party. The Court has granted the said applications exh. 24, 26 and 28 vide order dated 13.1.1997. However, respondent no.1 failed and neglected to make any change in the cause-title as directed by the Court. The applicants' advocate therefore inserted the name of the applicants on 12.2.1997 in the plaint as well in the injunction application and also gave an application vide exh.46 with a prayer that respondent no.1 may be directed to supply the copy of the plaint to the third party. Thereafter respondent no.1 gave an application vide exh.51 and prayed therein that as third parties have carried out the amendment on 12.2.1997 and contending that in view of the provision of Order 6 Rule 18 of the Code, the amendment which was required to be carried out within 14 days from the date of the order, which is not carried out, therefore the amendment which is carried out

by the third party, is required to be rejected, and the third parties name is required to be deleted from the plaint as well as from the injunction application. The learned trial judge granted the said application which has given rise to the present application.

3.This Court has heard Mr. A.S.Pandya, learned advocate of the applicants, perused the impugned order and the provisions contained under the Code.

4.There is no dispute that respondent No.1 has filed suit against respondent No.2 for declaration and permanent injunction. It is also admitted position that the land in question belong to respondent No.2 as well as present applicants and respondent No.1 has intensionally and deliberately not joined the applicants as party in the said suit. Therefore the applicants themselves filed three separate applications to implead them as co-defendant in the said suit which came to be allowed. Admittedly, the said order was passed under Rule 1 Order 10 of the Code therefore it was incumbent upon respondent No.1 – original plaintiff to carry out the amendment and then to supply the copy of the amended plaint to the applicants which he failed to do, therefore applicants were forced to carry out the amendment in the cause-title of the plaint as well as interim injunction application. Thereupon, respondent No.1 has filed application under Order 6 Rule 18 of the Code, wherein it was contended that the applicants have failed to carry out the amendment within 14 days and therefore they should not be permitted to amend the same after expiry of the said period and prayed for cancellation of the amendment and to delete their names from the cause-title. According to this Court application exh. 51 filed by respondent No.1 under Order 6 Rule 18 is not maintainable, as the applicants have sought the order under Order 1 Rule 10 of the Code to implead them as necessary party, which came to be allowed, therefore it was the duty of respondent No.1 to carry out the amendment, which he failed to do.

5.In aforesaid view of the matter, the order which is impugned in this Civil Revision Application, does not stand to scrutiny and in passing the said order the learned trial Judge has committed not only illegality but jurisdiction error as well.

6.In aforesaid view of the matter, the order which is impugned in this application deserves to be quashed and set aside by allowing this Civil Revision Application.

7.For the foregoing reasons, Civil Revision Application succeeds and accordingly it allowed with no order as to costs. The order dated 15.4.1997 recorded below application exh.51 by the learned Civil Judge (JD) at Wankaner in Regular Civil Suit No. 140 of 1996 is hereby

quashed and set aside, the result of which is that application exh. 51 is rejected. The learned trial Judge is expected to give expeditious hearing to the Regular Civil Suit No. 140 of 1006..

(A.M.Kapadia,J)

Jayanti*